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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,321	06/27/2001	Sergey N. Razumov	59036-022	3651

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EXAMINER	
O'CONNOR, GERALD J	

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/891,321	Razumov	
	Examiner	Art Unit	
	O'Connor	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *March 13, 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) *1-13 and 27-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14-26 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *October 18, 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the amendment and arguments filed by applicant on March 13, 2006 in reply to the previous Office action on the merits, mailed December 14, 2005.

2. The amendment of claim 14 in the reply filed by applicant on March 13, 2006 is hereby acknowledged.

3. The addition of claim 31 in the reply filed by applicant on March 13, 2006 is hereby acknowledged.

Election/Restriction

4. Claims 1-13 and 27-30 continue to stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed November 17, 2004.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 14-20, 22, 24-26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al., in view of Gazzuolo (US 6,546,309).

Regarding claims 14, 16, 18, 19, and 26, Bailey Jr. et al. disclose a method of selling goods, comprising the steps of: selecting human models representing categories of a pre-set classification of goods (styles and sizes/physical characteristics); trying on the goods by the human models of the respective categories, at least one model being assigned to try on goods that belong to a category of the classification (inherent); obtaining body measurements (measurements/sizes) of a customer to determine to which category in the pre-set classification of goods the customer belongs; based on the body measurements, assigning by a computer system to the customer the category (size) that corresponds to a human model having individual characteristics (sizes/measurements) corresponding to the body measurements of the customer; determining evaluation marks by the computer system (inherent: customer's evaluation for example, "buy," "don't buy," etc.) for the goods in the category assigned to the customer; pre-selecting by the computer system, based on the determined evaluation marks, a group of items (the items to be purchased) among the goods in the category assigned to the customer; and,

enabling the customer to access said group of items. See, in particular, the paragraph bridging pages 6 and 7, as well as the paragraph immediately thereafter. The method of Bailey Jr. et al., though, does not include that the evaluation marks are quantitative in a range from a lower mark to a higher mark and are pre-set based on evaluating the goods tried on by the respective model, nor that a model or an expert makes the evaluation or selection. However, it is common in the art for evaluations to be made by experts or the person trying on clothes. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ a model or an expert to make the evaluation or selection, because such individuals would be qualified to make a correct evaluation/selection. Regarding the evaluation marks for fit being quantitative in a range from a lower mark to a higher mark, Gazzuolo teaches the use of fit evaluation marks that are quantitative in a range from a lower mark to a higher mark (see, for example, column 9, lines 27-30). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to use evaluation marks that were quantitative in a range from a lower mark to a higher mark, in accordance with the teachings of Gazzuolo, in order to establish relative preferences for garments having varying degrees of fit.

Regarding claims 15, 17, and 20, the method of Bailey Jr. et al. includes that the customer is enabled to watch video images depicting in motion the human models wearing the pre-selected items; that the goods include clothes items; and, that the pre-set classification of Bailey Jr. et al. takes into account body types of customers (sizes/physical characteristics).

Regarding claim 22, Bailey Jr. et al. do not teach that the classification takes eye color into account. However, it is common in the art to recommend clothing based on a customer's eye color. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ the step of taking eye color into account for classification to select clothing that would complement a customer's eyes.

Regarding claims 24 and 25, the method of Bailey Jr. et al. includes that the customer is enabled to access data on additional items associated with each of the pre-selected items (e.g., style variations, etc.), wherein the additional items are pre-selected when the goods are tried on by the human model (inherent).

Regarding claim 31, Bailey Jr. et al. do not teach the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold. However, Gazzuolo teaches the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold (see, for example, column 12, lines 14-20). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to have included the step of selecting a threshold of evaluation marks acceptable for the customer, wherein the pre-selected group of items has the evaluation marks higher than the threshold, in accordance with the teaching of Gazzuolo, in order to assist a customer in quickly locating the best fitting garments.

7. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al., in view of Gazzuolo (US 6,546,309), and further in view of Weaver.

Bailey Jr. et al. disclose a method of selling goods, as applied above in the rejection of claims 14 and 20 under 35 U.S.C. 103(a), but Bailey Jr. et al. do not teach that a customer's hair color or skin tone are taken into account. However Weaver discloses a similar method, and the method of Weaver indeed teaches taking hair color (17) and skin tone (15) into account in making recommendations/selections. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the method of Bailey Jr. et al. so as to take hair color and/or skin tone into account when recommending/selecting items, in accordance with the teachings of Weaver, in order to recommend/select items of clothing that would best complement a particular customer.

Response to Arguments

8. Applicant's arguments filed March 13, 2006 have been fully considered but they are not deemed persuasive.

9. Regarding the argument that Gazzuolo fails to disclose that the evaluation marks for fit are quantitative in a range from a lower mark to a higher mark, Gazzuolo indeed discloses the use of fit evaluation marks that are quantitative in a range from a lower mark to a higher mark. See, for example, column 9, lines 27-30.

10. Regarding the argument that Gazzuolo fails to disclose that the evaluation marks are based on the goods being tried on by respective human models, Gazzuolo indeed discloses that the evaluation marks are based on the goods being tried on by respective human models. See, for example, column 2, lines 7-12. In any event, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. Regarding the argument that neither Bailey Jr. et al. nor Gazzuolo teach or suggest the step of assigning to the customer, based on body measurements, the category (e.g., size number) that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer, both Bailey Jr. et al. and Gazzuolo each disclose the step of assigning to the customer, based on body measurements, the category (e.g., size number) that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer (i.e., same size). See, for example, page 7, column 1, lines 1-6, of Bailey Jr. et al., and column 14, lines 40-45 of Gazzuolo.

12. Regarding the argument that adequate consideration has not been given to the particular problems and solutions addressed by applicant's claimed invention, the examiner has indeed given adequate consideration to the particular problems and solutions addressed by applicant's claimed invention, since the references are clearly directed to the same particular problems and solutions.

13. To the extent that applicant is arguing that the applied prior art references are directed to nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the applied prior art references lie squarely in the same field of applicant's endeavor, and, are more than just reasonably pertinent to the particular problems with which applicant was concerned.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to the disclosure.

15. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is (571) 273-6787.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at (571) 272-6771.

Official replies to this Office action may be submitted by any ***one*** of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC
May 25, 2006

5/25/06

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627